

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE JURISDICTION

CRI.APPLICATION NO. 6879 OF 2005

Shivram @ Shiva Lakhan
Gauda, Convict Prisoner
No.C/2349,
Nashik Road Central Prison
Nasik]..Applicant

Vs.

The State of Maharashtra .. Respondents

Mr.Sandeep Deshmukh on behalf of Smt.Pranali Kakade
(appointed as amicus curiae) for Applicant
Smt.U.V.Kejariwal A.P.P. for State

CORAM: SMT.V.K.TAHILRAMANI, J.
DATE : JUNE 23, 2006
IN CHAMBER AT 2.35 P.M.

P.C.

1. Heard the learned amicus curiae appointed for the applicant and the learned A.P.P. for the State.
2. The applicant who is at present in Nasik Central Prison, has challenged the category under which he has been placed under 14 years rule. By order dated 22nd December, 1995, the learned Sessions Judge Greater Bombay has convicted the

applicant in Sessions Case No.615 of 1991. By the said judgment and order, the applicant along with other accused came to be convicted under Sections 302, 392, 394 and 397 r.w. 34 of IPC.

3. The prosecution case is that the applicant-original accused No.2 was working as a watchman and original accused no.1 Raju Gauda was working as a waiter in the said hotel. The said hotel was "Sea-Prince" and it was situated at Bombay Central. The said hotel was earlier known as "New Madras Cafe". On 13th March, 1991 the applicant along with co-accused came to the hotel at 11.30 p.m. when everybody was sleeping. One of the employees Gangadhar opened the door for both the accused and allowed them to enter the hotel. Thereafter, Gangadhar went to sleep. After sometime original accused no.1 went to the kitchen and brought a chopper from the kitchen which was used for cutting chicken. Accused no.2 i.e. present applicant and one other accused i.e. accused No. 3 took out choppers which they had brought with them concealed in their clothes. All the three accused including the applicant gave

blows with choppers on Gangadhar. Thereafter they took out keys from under the pillow of Gangadhar. Thereafter the cash from the hotel came to be robbed by the applicant and other two accused persons. Gangadhar succumbed to death on account of injuries caused to him by the applicant and other accused.

4. The case of the applicant has been considered by the Government and he has been placed under category 5-A. Category 5-A covers cases of murder committed by dacoits and robbers in the act of dacoities and robberies. Prisoners under this category would have to undergo 26 years of imprisonment including remission and set off period subject to a minimum of 14 years of actual imprisonment.

5. Looking to the facts of this case which are reflected hereinabove, it is clear that murder of Gangadhar was caused by the applicant and co-accused in the act of committing robbery in the said hotel. In this view of the matter, the applicant would be squarely covered by category

5-A.

6. Looking to these facts, I am of the opinion that the applicant has been correctly placed in category 5-A. Hence, no interference is called for.

7. Criminal Application is rejected.

[SMT.V.K.TAHILRAMANI, J.]